IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

LPA No.14 of 2007

Reserved on:**9.10. 2007**

Date of decision: **29.10.2007**

Shri Yuv Raj Appellant.

Versus

The Hallan-I Cooperative Consumer Store Ltd., Baltha & ors. Respondents.

The Hon'ble Mr. Justice Deepak Gupta,J.
The Hon'ble Mr. Justice V.K.Ahuja, J.

Whether approved for reporting[1]? Yes.

For the Appellant: **Mr.P.S.Patwalia, Sr. Advocate with Mr. Puneet Khurawa & Mr. Dalip K.Sharma.**

For the respdt.No.1: **Mr. Bhupender Gupta, Sr. Advocate with Mr. Praneet Gupta, Advocate.**
No.2 to 4: **Mr. M.S.Chandel, Advocate General with Mr. R.M.Bisht, Dy. A.G.**
No.5: **Mr. Tarlok chauhan, Advocate.**

Per V.K.Ahuja,J

This order shall dispose of the Letters Patent Appeal filed by the appellant against the judgment dated 30.4.2007 of the learned Single Judge Mr. Justice Rajiv Sharma of this Court allowing the writ petition filed by respondent No.1.

Whether the reporters of Local Papers may be allowed to see the Judgment? No.

Briefly stated, the facts of the case are that respondent No.1 which is a Cooperative Society filed a writ petition in this Court under Article 226 of the Constitution of India challenging the allotment of fair price shop at Village Brai Ra Gran which was allotted in favour of the present appellant who was respondent No.5 in the writ petition. The said allotment in favour of respondent No.5 was challenged by the petitioner alleging that the allotment had been made in violation of the instructions and guidelines issued by the State whereby first preference had to be given to Cooperative Societies while making allotment of fair price shops. It was further alleged that the shop had been allotted to respondent No.5 on the recommendation of the Gram Panchayat, Hallan-I which vide resolution dated 28.3.2002 had approved the opening of fair price shop/depot at Brai Ra Gran and had also recommended the name of respondent No.5 for the allotment of the Fair Price shop. The learned Single Judge after taking a reply from the respondents in that case, allowed the writ petition and quashed the order of allotment of

fair price shop made in favour of respondent No.5 and respondents No.1 to 4 were directed to call fresh application from all eligible candidates including respondent No.5(present appellant) for allotment of fair price shop at Brai Ra Gran. Some general directions were also issued by the learned Single Judge while disposing of the writ petition.

We have heard the learned counsel for the parties and have also gone through the record of the Panchayat which was summoned during the course of hearing of the writ petition.

A perusal of the instructions of the State Government issued on 25.4.1995 (Annexure P3 with the writ petition) as well as the clarification dated 16.3.1999 clearly shows that first preference is to be given to the cooperative sector. After the District Administration exhausts possibilities of allotting the fair price shop to the cooperative sector and no cooperative society is ready or willing to run such shop then second preference is to be given to an ex-servicemen/handicapped persons/educated unemployed. If after exhausting these

possibilities, none is available then the District Administration should recommend establishment of a retail outlet by the State Civil Supplies Corporation.

It is thus obvious that an effort has to be first made to get the shop/depot opened from the cooperative sector. If no co-operative society is willing to run such a shop/depot then alone the same can be allotted to an ex-servicemen/ handicapped persons/ educated unemployed. In case no person of any of the three categories is available, then only the retail outlet can be allotted to the State Civil Supplies Corporation. In the present case, no effort has been made by the District Administration to find out whether any cooperative Society was willing to run the shop/depot at village Brai Ra Gran or not.

On a perusal of the record of the Panchayat, it is clear that there is nothing on record to show that before making the allotment of fair price shop in favour of respondent No.5 any proclamation was issued inviting applications for allotment of fair price shop. The learned counsel for the

appellant was unable to produce any such record of the Panchayat as to how notices were issued inviting the applications for allotment of this fair price shop. It appears that the Panchayat took the application of the appellant and made the allotment in his favour vide their impugned order which has been set aside by the learned Single Judge.

After perusal of the record and the facts of the case, we are clearly of the opinion that the order passed by the learned Single Judge cancelling the allotment of the fair price shop in favour of the appellant does not suffer from any illegality and those findings are liable to be affirmed. However, in regard to the directions given in the said judgment, while disposing of the writ petition, we are constrained to remark that the learned Single Judge had wrongly observed that firstly, the preference shall be given to the Co-operative Societies for running fair price shops, then to H.P.State civil supplies Corporation and in the last event, preference shall be given to Ex-Servicemen or unemployed educated youth. However, As already discussed above the

instructions issued by the State government show that first preference has to be given strictly to the Cooperative Societies, secondly, it has to be given to the ex-servicemen and unemployed educated youth and the third preference has to be given to the H.P.State Civil Supplies Corporation. Therefore, the said order of the learned Single Judge is liable to be modified to the extent that the Civil Supplies Corporation has to be given the 3rd preference in the order of preference as per the instructions issued by the State Government. Moreover, the learned Single Judge had directed that proper notice be published either in two vernacular newspapers or by any known mode of publication including affixation of the notices at the Panchayat Ghar. In this regard, we are of the view that since the fair price shop is to be opened in remote area, the issuance of publication in two vernacular newspapers will be a costly affair for Panchayat and will not serve any useful purpose. Therefore, the order passed in this regard by the learned Single Judge is modified to this extent that the

notices shall be published by affixation of notices at Panchayat Ghar, Municipal Committee's office and Nagar Panchayat Offices and in addition to above, the said notices may also be placed outside the Govt. Schools in the area as well as by way of Munadi in the area by beat of drum.

The order passed by the learned Single Judge is modified to the above extent only. However, it is clarified that in view of the order passed by the learned Single Judge and to avoid inconvenience to the persons living in the area in getting their ration from the fair price shop, respondent No.5(appellant) is permitted to run her fair price shops till the process of calling of fresh applications is concluded within a period of three months from today as ordered by the learned Single Judge.

The L.P.A. is partly allowed to the above extent. There will be no order as to costs.

(Deepak Gupta),J

29th Oct.2007 **(V.K.Ahuja),J.**

(SDS)